

Civil Division - New Castle County

February 11, 2005

The Honorable John F. Klingmeyer
Mayor
City of New Castle
220 Delaware Street
New Castle, DE 19720-4816

**Re: Freedom of Information Complaint
Against City of New Castle**

Dear Mayor Klingmeyer:

On October 7, 2004, our office received your Freedom of Information Act (“FOIA”) complaint alleging that the New Castle City Council (“the Council”) “thwarted” FOIA’s intent by the manner in which it conducted two Council meetings. By letter dated October 18, 2004, we asked the City Council to respond to your complaint. We received the City’s response on October 27, 2004.

The New Castle City Council held public meetings on June 23, 2004 and June 25, 2004 to discuss and approve the City’s annual budget. You do not dispute the fact that these meetings were properly noticed. Rather, you challenge what you describe as the

“irregular days and times” that the meetings were held and that they were held at the City Police facility rather than the usual location of Council meetings. In addition, you challenge the fact that the meetings were not electronically recorded contrary to “normal practice” and that the clerk of Council who usually takes notes at Council meetings and subsequently prepares meeting minutes was not personally informed of the meetings and, therefore, was not in attendance at either meeting. You describe the meeting minutes that were prepared on behalf of Council as “merely convenient recollections of the President of Council presented in cursory form.” Finally, you ask this office to direct the President of City Council to observe the requirements of FOIA and other authorities cited in your complaint¹ “not only in word but spirit, and [to] require and ensure that the secretary (clerk) be notified and attend all future Council meetings and executive meetings of Council to record minutes in her usual manner.”

Relevant Statutes

Section 10004 of Title 29 of the *Delaware Code* provides that “[e]very meeting of all public bodies shall be open to the public” except as authorized by statute for executive session. Section 10004(e)(3) further requires all public bodies to give timely notice of their meetings and to advise the public if they intend to hold a closed executive session. Such notice must include the agenda, if such has been determined at the time, and must identify the dates, times and locations of such meetings.

¹ In addition to citing various provisions of FOIA that you contend the Council violated in “spirit” you also quote from The Standard Code of Parliamentary Procedure by Alice Sturgis and Robert’s Rule of Order Revised. This office has no statutory authority to require compliance with either of the two latter authorities that you cite.

Section 10004(e)(4) requires that notice “shall include, but not be limited to, conspicuous posting of said notice at the principal place of the public body holding the meeting,”

Section 1004(f) requires every public body to “maintain minutes of all meetings, including executive sessions, conducted pursuant to this section, and shall make such minutes available for public inspection and copying as a public record. Such minutes shall include a record of those members present and a record, by individual members (except where the public body is a town assembly where all citizens are entitled to vote), of each vote taken and action agreed upon.”

Legal Analysis

As indicated in your complaint, you do not dispute the fact that the June 23, 2004 and June 25, 2004 Council meetings were posted and advertised in conformity with the provisions of 29 *Del.C.* §10004(e). Similarly, you did not dispute that minutes were prepared with respect to both Council meetings. Rather, you assert that by failing to record the meetings electronically, by failing to have the City clerk take minutes, and by holding the meetings in a different location within the City and at a different time than the Council meetings are normally held, the president and Council “thwarted” the intent of FOIA.

This Office has determined that the statutory duty to maintain minutes of all public meetings does not require a public body to tape record those meetings. See Opinion 94-I023 (June 21, 1994) (contrasting §10004(f) with the requirement of 29 *Del.C.* §10125(d) that administrative hearings be tape-recorded).

Further, the minutes of public meetings need only include “a record of those members present and a record by individual members (except where the public body is a town assembly where all citizens are entitled to vote) of each vote taken and action agreed upon” 29 *Del.C.* §10004(f). FOIA, however, “neither says that the subject’s discussion must be summarized [in the minutes] nor attempts to define how specific such summary should be.” As a result, the Chancery Court has concluded that the minutes of public bodies need not “summarize the subjects discussed with any degree of specificity.” *Common Cause of Delaware v. Red Clay Consolidated School District Board of Education*, Del. Ch., C.A. No. 13798, 1995 WL 733401 at p. 4 (Dec. 5, 1995) (Balick, V.C.). The minutes of the meetings in question are legally sufficient.

Additionally, there is no statutory provision in FOIA that requires specific personal notice to be given to any individual nor is there any requirement that a particular person be designated to prepare the minutes of public meetings.

Finally, while you have claimed that the meetings at issue were held on “irregular days and times,” FOIA is silent as to the locations and times of public meetings. As a matter of good governmental practice, however, public bodies should attempt to schedule their meetings at times that are convenient to the greatest number of citizens and at locations that are not only readily accessible but that can also accommodate all who may want to attend. From the record presented, there is no evidence that the City Council scheduled the meetings in questions on dates and times or at the particular location in an attempt to thwart the public’s right to attend the meetings.

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For these reasons, this Office finds that the New Castle City Council did not violate any provisions of FOIA with respect to the manner in which it conducted the June 23, 2004 and June 25, 2004 Council meetings or in the preparation of the meetings' minutes.

Conclusion

For the foregoing reasons, we find that the City Council did not violate the requirements of FOIA.

Very truly yours,

Keith R. Brady
Assistant State Solicitor

APPROVED:

Malcolm S. Cobin
State Solicitor

Cc: Hon. M. Jane Brady
Phillip G. Johnson, Opinion Coordinator